

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-7707

CARDELL LAMONT AVENT,

Petitioner - Appellant,

v.

RANDALL C. MATHENA, Warden, Wallens Ridge State Prison,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern
District of Virginia, at Richmond. John A. Gibney, Jr.,
District Judge. (3:11-cv-00605-JAG)

Submitted: July 25, 2013

Decided: August 13, 2013

Before DUNCAN, DAVIS, and DIAZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Cardell Lamont Avent, Appellant Pro Se. Eugene Paul Murphy,
OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia,
for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Cardell Lamont Avent seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2254 (2006) petition.* The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A) (2006). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2006). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000); see Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the petition states a debatable claim of the denial of a constitutional right. Slack, 529 U.S. at 484-85.

* We previously remanded this case to the district court for the limited purpose of enabling the court to determine whether Avent had shown excusable neglect or good cause warranting an extension of time to appeal. See Avent v. Mathena, 2013 WL 738320 (4th Cir. Feb. 28, 2013). On remand, the district court granted his motion for extension of time to file a notice of appeal. Avent's appeal is therefore deemed timely filed.

We have independently reviewed the record and conclude that Avent has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny leave to proceed in forma pauperis, and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED